

UNITED STATES DISTRICT COURT

for the

District of Minnesota

United States of America

v.

Deon Leshawn Holmes

Date of Original Judgment:

11/18/2008

Date of Previous Amended Judgment:

(Use Date of Last Amended Judgment if Any)

Case No: 08-cr-232-009 (MJD/AJB)

USM No: 14065-041

Katherine Menendez

Defendant's Attorney

ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☐ DENIED. ☒ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of 108 months is reduced to 86 months.

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Previous Offense Level:	<u>29</u>	Amended Total Offense Level:	<u>25</u>
Criminal History Category:	<u>VI</u>	Criminal History Category:	<u>VI</u>
Previous Guideline Range:	<u>151-188 months</u>	Amended Guideline Range:	<u>120-137 months</u>

II. SENTENCE RELATIVE TO THE AMENDED GUIDELINE RANGE

☐ The reduced sentence is within the amended guideline range.☒ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a substantial assistance departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.☐ The reduced sentence is above the amended guideline range.

III. ADDITIONAL COMMENTS

In considering a § 3582(c)(2) motion, this Court is "bound by its previous determination" regarding the amount of drugs establishing the offense level. United States v. Adams, 104 F.3d 1028, 1030 (8th Cir. 1997). The Court must "leave all of its previous factual decisions intact when deciding whether to apply a guideline retroactively." Id. at 1031. Based on the facts available to the Court at the original time of sentencing, the Court concludes that there is no basis to hold Defendant accountable for more than 150 grams of cocaine base. Defendant is therefore granted a proportionally reduced sentence from the new Guideline range as a result of his substantial assistance to the Government.

Except as otherwise provided, all provisions of the judgment dated 11/18/2008 shall remain in effect.

IT IS SO ORDERED.

Order Date:

1-8-12


Judge's signature

Effective Date:

(if different from order date)

Chief Judge Michael J. Davis, U.S. District Court

Printed name and title